

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL,

Plaintiff,

v.

CHARLES V. KESTER, ET AL.,

Defendants.

2:02-cv-00018-GEB-GGH

ORDER APPROVING CONSENT
DECREE, BARRING CONTRIBUTION
CLAIMS, AND FINDING CONSENT
DECREE WAS REACHED IN GOOD
FAITH

AND RELATED CROSS-CLAIMS,
COUNTERCLAIMS, and THIRD-PARTY
ACTIONS

Plaintiff California Department of Toxic Substances Control (the "Department") moves for approval of the proposed Consent Decree (the "Maita Consent Decree") into which it entered with Maita Chevrolet GEO, Inc. ("Maita"), the California Department of Fish and Game, the California National Guard, and the California Department of Forestry and Fire Protection ("State Agencies"). (ECF No. 1204.) The Maita Consent Decree was filed on May 2, 2011 as Docket Number 1208. Maita also seeks a judicial declaration under California Code of Civil Procedure section 877.6 that the Maita Consent Decree is made in good faith, and an order issued under 42 U.S.C. § 9613(f) which would bar contribution or indemnity claims against Maita for the "matters addressed" in the Maita Consent Decree. (ECF No. 1213.)

I. BACKGROUND

This is a cost recovery action brought by the Department under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), prescribed in 42 U.S.C. §§ 9601 *et seq.*. The Department seeks to recover the response costs it has incurred and will incur monitoring, assessing, and evaluating the alleged release and threatened release of hazardous substances from a tract of land located at the intersection of White Rock and Kilgore Roads in Rancho Cordova, California (the "Site"). The Department also seeks to recover the costs it has incurred and will incur removing, remediating, and overseeing the removal and remediation of hazardous substances at the Site.

Following a settlement conference with United States Magistrate Judge Hollows on May 29, 2009, the Department and twenty nine parties reached a settlement and entered into a proposed consent decree which the district court subsequently approved (the "2010 Consent Decree"). (ECF Nos. 1102, 1120.) The Department then filed a Fourth Amended Complaint (the "Complaint"), naming as defendants Maita and other parties who were not a party to the 2010 Consent Decree. (Complaint ¶¶ 63-67, ECF No. 1145.) Maita filed a counterclaim against the State Agencies, who are signatories to the Maita Consent Decree. (ECF No. 1175.) This pending litigation was referred to the Voluntary Dispute Resolution Program for mediation on October 27, 2010. (ECF No. 1178.) The parties reached a settlement agreement "in principle prior to the mediation." (Decl. of Fiering ¶ 4, ECF No. 1206.) The Maita Consent Decree "memorializes that settlement agreement." Id.

II. MOTION FOR APPROVAL OF MAITA CONSENT DECREE

Here, the decision whether the Maita Consent Decree is approved requires the "court [to] be satisfied that [the Maita Consent

Decree] is at least fundamentally fair, adequate and reasonable." U.S. v. State of Oregon, 913 F.2d 576, 580 (9th Cir. 1990). "[F]airness in the CERCLA settlement context has both procedural and substantive components. To measure procedural fairness, a court should ordinarily look to the negotiation process and attempt to gauge its candor, openness, and bargaining balance." U.S. v. Cannons Eng'g Corp., 899 F.2d 79, 86 (1st Cir. 1990) (citation omitted) (relied on by U.S. v. Montrose Chem. Corp. of California, 50 F.3d 741, 746-48 (9th Cir. 1995)). "Substantive fairness introduces into the equation concepts of corrective justice and accountability: a party should bear the cost of the harm for which it is legally responsible." Id. at 87. In determining whether a settlement is reasonable, courts look to whether the proposed settlement will be effective in ensuring a cleanup of the property, whether it satisfactorily compensates the public for the costs of cleanup, and whether the settlement reflects the relative strengths of the parties' bargaining positions. Id. at 89-90. Finally, determining the fairness and reasonableness of the Maita Consent Decree requires consideration of the extent to which it is consistent with the purposes of CERCLA, two of which are: (1) to create a prompt and effective response to hazardous waste problems; and (2) to ensure that the cost of remedying the hazardous waste problem is paid for by those who caused the problem. Id. at 90-91.

Here, the parties have made the required showing that the Maita Consent Decree is procedurally and substantively fair, reasonable, and consistent with the purposes of CERCLA. The Maita Consent Decree provides that "Maita shall pay a total of Thirty Thousand Dollars (\$30,000) to the Department[.]" (Maita Consent Decree ¶ 7.1, ECF No. 1208.) "[T]he total estimated response costs in the matter are:

1 \$2,500,000 future remedial action costs, \$764,603 past oversight costs
2 and \$126,000 future oversight costs, which total approximately
3 \$3,390,603.” (Mot. 9:18-20, ECF No. 1205; Fiering Decl. Exs. B-C, ECF
4 No. 1206.) The Maita Consent Decree, along with the concurrently filed
5 Sullivan Consent Decree and the 2010 Consent Decree, “will provide
6 recovery of over 78 [percent] of the total estimated response costs.”
7 (Mot. 9:21-22, ECF No. 1205; ECF Nos. 1102, 1219.) Although this payment
8 does not fully compensate the Department for its oversight costs, the
9 Department has the ability to seek these costs from other non-settling
10 parties and to apply any unused funds obtained in the consent decrees to
11 cover these costs. Therefore, the Maita Consent Decree reflects a
12 “reasonable method of weighing comparative fault[.]” Id. at 88. The
13 Maita Consent Decree also promptly and effectively responds to the
14 hazardous waste problem and ensures that the cost of remedying the
15 hazardous waste problem is paid for by those who caused it. Therefore,
16 the Maita Consent Decree is approved as procedurally and substantively
17 fair, reasonable, and consistent with the purposes of CERCLA.

18 **III. MOTION FOR ORDER BARRING CONTRIBUTION CLAIMS AND**
19 **DECLARATION OF GOOD FAITH SETTLEMENT**

20 Maita also seeks an order barring contribution and indemnity
21 claims for the “matters addressed” in the Maita Consent Decree. (ECF No.
22 1211, Mot. 7:25-28.) CERCLA section 113(f) provides:

23 A person who has resolved liability to the United
24 States or a State in an administrative or
25 judicially approved settlement shall not be liable
26 for claims for contribution regarding matters
27 addressed in the settlement. Such settlement does
28 not discharge any of the other potentially liable
persons unless its terms so provide, but it reduces
the potential liability of the others by the amount
of the settlement.

1 42 U.S.C. § 9613(f)(2). Under this section, "[c]ontribution protection
2 is conferred on the settling parties at the time the settling parties
3 enter into the agreement." U.S. v. Colorado & E. R.R. Co., 50 F.3d 1530,
4 1538 (10th Cir. 1995). Therefore, Maita's request for an order barring
5 contribution and indemnity claims for the "matters addressed" in the
6 Maita Consent Decree is granted.

7 Maita also seeks a judicial declaration that the Maita Consent
8 Decree constitutes a good faith settlement under California Code of
9 Civil Procedure section 877.6, which precludes claims for contribution
10 and indemnity. (Mot. 4:17-6:11, ECF No. 1211.) Section 877.6 of the
11 California Code of Civil Procedure prescribes:

12 A determination by the court that the settlement
13 was made in good faith shall bar any other joint
14 tortfeasor from any further claims against the
15 settling tortfeasor or co-obligor for equitable
comparative contribution, or partial or comparative
indemnity, based on comparative negligence or
comparative fault.

16 Cal. Code Civ. P. § 877.6(c). Whether a settlement is made in "good
17 faith" within the meaning of section 877.6 is determined based on the
18 factors identified by the California Supreme Court in Tech-Bilt, Inc. v.
19 Woodward-Clyde & Assoc., 38 Cal. 3d 488 (1985), including: (i) a rough
20 approximation of plaintiff's total recovery and the settlor's
21 proportionate liability; (ii) the amount paid in settlement; (iii) the
22 allocation of settlement proceeds among plaintiffs; (iv) a recognition
23 that the settlor should pay less in settlement than he would if he were
24 found liable after trial; (v) the financial conditions and insurance
25 policy limits of settling defendants; and (vi) the existence of
26 collusion, fraud, or tortious conduct aimed to injure the interests of
27 non-settling defendants. Id. at 499.

Based on the Tech-Bilt factors, the Maita Consent Decree qualifies as a good faith settlement within the meaning of section 877.6. "The first factor, an approximation of recovery and potential liability, is the most important." AmeriPride Serv., Inc. v. Valley Indust. Serv., Inc., Nos. CIV. S-00-113-LKK JFM, S-04-1494-LKK/JFM, 2007 WL 1946635, at *3 (E.D. Cal. July 2, 2007). "The settlement amount need only be 'in the ballpark' [to satisfy this factor], with any party challenging a settlement having the burden of establishing that it is so far out of the ballpark that the equitable objectives of section 877 are not satisfied." Id. Here, the Maita Consent Decree is within the "ballpark" of a "rough approximation" of the Department's total recovery and Maita's proportionate liability. Further, there is no evidence that the settling parties engaged in collusion, fraud, or other conduct seeking to impose an undue share of liability on the non-settling parties. Accordingly, the Maita Consent Decree was reached in good faith. Therefore, any claim against the settling parties "for equitable comparative contribution, or partial or comparative indemnity, based on comparative indemnity, based on comparative negligence, or comparative fault" is barred by California Code of Civil Procedure section 877.6.

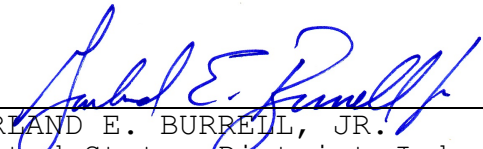
III. CONCLUSION

For the stated reasons, it is ORDERED:

1. The Maita Consent Decree is approved as procedurally and substantively fair, reasonable, and consistent with the purposes of CERCLA.
2. Any claim for contribution or indemnity against Maita for the "matters addressed" in the Maita Consent Decree is barred by 42 U.S.C. § 9613(f).

1 3. The Maita Consent Decree was entered into in good faith within the
2 meaning of California Code of Civil Procedure section 877.6, and
3 therefore, any claim against Maita for contribution or indemnity is
4 barred by section 877.6.

5 Dated: July 19, 2011

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8 GARLAND E. BURRELL, JR.
United States District Judge